Kumarasamy Pillai Govindaraju @ K Govindaraju a/l Kumarasamy Pillai & Ors v Vijayasundaram a/l Sambantham Mudaliar & Anor (Vegadachalam a/l Palaniappen, intervener)

HIGH COURT (PULAU PINANG) — CIVIL SUIT NO 22–226 OF 1995 (MT1)
JOHN O'HARA J
29 SEPTEMBER 2009

Civil Procedure — Parties — Intervention — Whether proposed intervener entitled to be added as intervener in present suit — Test to be applied — Rules of the High Court 1980 O 15 r 6(2)(b)(i), (ii) & (3)

On 21 April 1998, Kasi s/o Arunachalam Chettiar ('the fifth plaintiff') was granted an irrevocable power of attorney by seven persons, to manage their interests, right, title, share claims and benefits. The fifth plaintiff used the power of attorney to obtain letters of administration to administer the estate of the late Thiruvangadam, who died intestate. This was an application by one Vegadachalam a/l Palaniappen ('the proposed intervener') to be added as an intervener, pursuant to O 15 r 6 of the Rules of the High Court 1980 ('RHC'). It was the proposed intervener's case that Thiruvangadam estate had been mismanaged by the fifth plaintiff and that the latter had been keeping the beneficiaries in the dark. The proposed intervener claimed that the beneficiaries of the Thiruvangadam estate had appointed him their attorney vide a power of attorney dated 25 November 2002 and that he wished to intervene in the present suit against the defendants in his capacity as the attorney. At about 23 November 2002, six of the seven persons who granted the fifth plaintiff a power of attorney sought to revoke the same. The issues to be considered in this case were whether the power of attorney granted to the fifth plaintiff was revoked and whether the proposed intervener was entitled to be added as an intervener in the present suit.

Held, dismissing the application with costs:

(1) Seven persons had granted the fifth plaintiff a valid irrevocable power of attorney but only six of the seven sought to revoke the same. In addition, the proposed intervener had not shown how an irrevocable power of attorney could be revoked even if it were purportedly done by six out of the seven persons who had granted it in the first place (see para 12).

(2) The burden is on the proposed intervener to satisfy the court that the requirements stipulated in O 15 r 6(2)(b) of the RHC were met, which

he had not done. Having regard to the facts, evidence and submissions, the proposed intervener's application was premature, frivolous and vexatious and an abuse of the court process (see paras 13, 15–16 & 19).

(3) If the beneficiaries claimed that the fifth plaintiff had not carried out his duties as the administrator of the estate of Thiruvangadam satisfactorily, then the proper course of action that they should pursue would be a suit against the fifth plaintiff in his capacity as administrator of the estate and not against any other party, such as the second defendant who had dealings with the fifth plaintiff. Further the second defendant had bought the property in a sale sanctioned by the court (see paras 15 & 17).

[Bahasa Malaysia summary

Pada 21 April 1998, Kasi a/l Arunachalam Chettiar ('plaintif kelima') telah diberikan surat kuasa wakil yang tidak boleh batal oleh tujuh orang untuk menguruskan kepentingan, hak, hak milik, syer dan faedah. Plaintif kelima telah menggunakan surat kuasa wakil tersebut untuk mendapatkan surat-surat pentadbiran untuk mentadbir estet mendiang Thiruvangadam, yang meninggal dunia tanpa wasiat. Ini adalah permohonan oleh Vegadachalam a/l Palaniappen ('pencelah yang dicadangkan') untuk dimasukkan sebagai pencelah, berikutan A 15 k 6 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Pencelah yang dicadangkan berhujah bahawa estet Thiruvangadam telah disalah urus oleh plaintif kelima dan dia telah membiarkan benefisiari-benefisiari tertanya-tanya. Pencelah yang dicadangkan telah berhujah bahawa benefisiari-benefisiari bagi estet Thiruvangadam telah melantiknya sebagai wakil mereka melalui satu surat kuasa wakil bertarikh 25 November 2002 dan bahawa dia ingin mencelah dalam guaman ini terhadap defendan-defendan dalam keupayaannya sebagai seorang peguam. Pada kira-kira 23 November 2002, enam daripada tujuh orang yang telah memberikan surat kuasa wakil kepada plaintif kelima juga memohon untuk membatalkan surat kuasa wakil tersebut. Isi-isu yang perlu dipertimbangkan di dalam kes ini adalah sama ada surat kuasa wakil yang diberikan kepada plaintif kelima telah dibatalkan dan sama ada pencelah yang dicadangkan berhak dimasukkan sebagai pencelah dalam guaman ini.

Diputuskan, menolak permohonan dengan kos:

(1) Tujuh orang telah memberikan plaintif kelima surat kuasa wakil yang sah dan tidak boleh dibatalkan tetapi hanya enam daripada tujuh yang memohon untuk membatalkan surat kuasa wakil tersebut. Tambahan pula, pencelah yang dicadangkan tidak menunjukkan bagaimana surat kuasa wakil yang tidak boleh dibatalkan ini, boleh dibatalkan walaupun ianya dilakukan oleh enam daripada tujuh orang yang, pada asalnya telah memberikannya (lihat perenggan 12).

A (2) Beban terletak pada pencelah yang dicadangkan untuk menyakinkan mahkamah bahawa keperluan-keperluan yang ditetapkan di bawah A 15 k 6(2)(b) KMT telah dipenuhi, yang mana dia tidak berbuat demikian. Melihat pada fakta-fakta, keterangan dan hujahan-hujahan, permohonan pencelah yang dicadangkan adalah pramatang, remeh dan B menyusahkan dan adalah satu salah guna proses mahkamah (lihat perenggan 13, 15–16 & 19).

(3) Jika benefisiari-benefisiari mendakwa bahawa plaintif kelima tidak menjalankan tugasnya sebagai pentadbir estet Thiruvangadam dengan C memuaskan, tindakan yang betul yang seharusnya diambil oleh mereka adalah satu guaman terhadap plaintif kelima dalam keupayaannya sebagai pentadbir estet dan bukan terhadap mana-mana pihak yang lain, seperti defendan kedua yang pernah berurusan dengan plaintif kelima. Di samping itu, defendan kedua telah membeli harta tersebut D dalam satu penjualan yang disanksi oleh mahkamah (lihat perenggan 15 & 17).]

Notes

E For cases on intervention, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 5003–5041.

Cases referred to

Arab Malaysian Merchant Bank Bhd v Jamaluddin bin Dato Mohd Jarjis [1991] 2 MLJ 27; [1991] 1 CLJ Rep 19, SC (refd)

F *EON Bank v Pung Chong Thai* [2001] 5 MLJ 409; [2001] 5 CLJ 469, HC (refd)

Hong Leong Finance Bhd v Staghorn Sdn Bhd [1995] 2 MLJ 847; [1995] 3 CLJ 368, CA (refd)

G *Lee Meow Lim v Lee Meow Nyin t/a Cheong Fatt Merchant (Nabisco Brands (M) Sdn Bhd, intervener)* [1990] 3 MLJ 123, HC (refd)

Oscam SPA v Overseas Union Bank (M) Bhd [1999] MLJU 180; [1999] 3 CLJ 399, HC (refd)

Pegang Mining Co Ltd v Choong Sam & Ors [1969] 2 MLJ 52, PC (refd)

H *Tai Choi Yu v Syarikat Tingan Lumber Sdn Bhd* [1998] 4 MLJ 275; [1998] 4 CLJ 293, CA (refd)

Legislation referred to

Rules of the High Court 1980 O 15 r 6, 6(2)(b)(i), (ii), (3)

I Small Estates (Distribution) Act 1955 s 13

R Kengadharan (R Kengadharan & Co) for the intervener.
WK Yap (WK Yap Loo & Co) for the second defendant.
The first and fifth plaintiffs not present.

John O'Hara J:

INTRODUCTION

[1] This matter came before me as the hearing of encl 85, which is a summons in chambers filed by Vegadachalam a/l Palaniappen ('the proposed intervener') that he be added as an intervener pursuant to O 15 r 6 of the Rules of the High Court 1980.

[2] For the record, the first to fourth plaintiffs do not object to encl 85. The fifth plaintiff, Kasi s/o Arunachalam Chettiar ('Kasi') and the first defendant Vijayasundram s/o Sambantham Mudaliar were not present. Only the second defendant objects.

BRIEF FACTS

[3] The fifth plaintiff, Kasi s/o Arunachalam Chettiar is the administrator of the estate of Thiruvangadam Pillai Samikkanu @ Samikkanu Pillai a/l Pakiria Pillai ('Samikkanu'), deceased. On 21 April 1988 vide an irrevocable Power of Attorney No 2232 registered in the High Court Penang, the following seven persons:

(a) Gandhi s/o Kathirooon Pillai;

(b) Kalyani d/o Kathirooon Pillai;

(c) Singaravelu s/o Venugopal Pillai;

(d) Swaminathan Pillai s/o Thirumaniapillai;

(e) Kamalambal d/o Appasamy Pillai;

(f) Packirisamy s/o Samikkannu Pillai; and

(g) Janaki d/o Samikkannu Pillai,

appointed Kasi as their attorney to manage, their interests, right, title, share claims and benefits of any nature in the following estates:

(a) Govindasamy Pillai s/o Vengadasalam Pillai, deceased;.

(b) Sundarambal @ Jagathambal d/p Pakiria Pillai;

(c) Thanagapappu d/p Packiria Pillai;

(d) Samikkannu Pillai @ Thiruvengadam s/p Pakiria Pillai;

(e) Kalyani d/o Samikkannu; and

(f) Pathmavathi d/o Venugopal Pillai.

Thiruvangadam died intestate leaving the following eight persons as next of kin:

(a) Samikannu;

(b) Sundarambal;

(c) Thangapappu;

(d) K Nallapiravi;

(e) K Govindaraju;

(f) Amirthavalli;

(g) Thilagar s/o Ramakrishnan; and

(h) Indhirani w/o Ramakrishnan.

[4] Using the above power of attorney, Kasi obtained the 'Letters of Administrations Locustandi' under s 13 of the Small Estates (Distribution) Act 1955 to administer the estate of Thiruvangadam.

THE GROUNDS FOR THE APPLICATION

[5] The proposed intervener's case is that Kasi:

(a) has been mismanaging Thiruvangadam's estate;

(b) has been keeping the Thiruvangadam's beneficiaries in the dark; and

(c) cannot be contacted.

The proposed intervener wishes to intervene in his capacity as the attorney for the beneficiaries of the estate of Thiruvangadam. The proposed intervener claims to hold a power of attorney given to him by the purported legitimate beneficiaries of the estate of V Govindasamy Pillai. They according to para 5 of encl 86 (the affidavit in support of encl 85) are also the beneficiaries of the estate of Thiruvangadam Pillai and are:

(a) S Kamalambal;

(b) S Pakirisamy;

(c) S Janaki;

(d) V Singaravelu;

(e) S Parimalam @ Meena; and

(f) S Subramaniyan.

[6] He goes on to state that Thiruvangadam died intestate leaving the following beneficiaries:

(a) S Kamalambal;

(b) S Pakirisamy;

(c) S Janaki;

(d) V Singaravelu;

(e) S Parimalam @ Meena; and

(f) S Subramaniyan.

[7] The above Thiruvangadam beneficiaries and 11 others namely:

(a) S Panneer s/o Saminathan;

(b) Kannan @ Kaliyappan s/o Saminathan;

(c) S Aanandan s/o Saminathan;

(d) K Ganthi s/o Kathiresan;

(e) G Saundravalli w/o Govindaraju;

(f) G Vijayabarathan s/o Govindaryu;

(g) Muruganandan s/o Govindaraju;

(h) G Sachidanandam s/o Govindaraju;

(i) G Dhanalakshmi d/o Govindaraju;

(j) G Veeramani s/o Govindaraju; and

(k) Kalyani d/o Kathiresan Pillai,

claiming to be the living descendants and legal heirs of G Govindasamy representing the branch late Janaki (whatever that means) appointed the proposed intervener as their attorney vide a power of attorney dated 25 November 2002 (exh VP 4 of encl 86).

[8] At about the same time on 23 November 2002, the following:

(a) Gandhi;

(b) Singaravelu;

(c) Kamalambal;

(d) Pakrisamy;

(e) Janaki; and

(f) Kalyani,

purported to revoke the power of attorney granted to Kasi on 21 April 1988.

CONSIDERATION AND DECISION

[9] I start my consideration of this matter with the original power of attorney granted to Kasi dated 21 April 1988. It is to my mind a valid power of attorney having been registered and deposited in the High Court of Penang on 16 June 1988. It is an irrevocable power of attorney.

[10] The letters of administration given to Kasi is still valid. Attempts to revoke it have not been successful. It is also pertinent to note that the:

> Pemberian Surat-Kuasa Pentadbiran Di bawah Seksyen 13 adalah tertakluk kepada had-had yang berikut:
>
> Ianya adalah terhad di bawah Seksyen 13 Akta Harta Pesaka Kecil (Pembahagian) kepada Memungut dan kepada menerima piutang-piutang yang kena bayar kepada harta Pusakanya tertakluk kepada arahan-arahan Pentadbir Tanah dan Daerah.

[11] The letters of administration do not state who the beneficiaries of the estate of Thiruvangadam are, and to this day I am still left in considerable doubt as to whom are the rightful beneficiaries. The identification of the beneficiaries had become blurred and has thus made the proposed intervener's burden of satisfying this court all the more onerous.

[12] The power of attorney given to Kasi is stated to be irrevocable. It was given by seven persons as per para 3 above. Yet there is a purported revocation of that power of attorney by six of the seven persons. The proposed intervener has not shown to my satisfaction how an irrevocable power of attorney can be revoked even if it were to be purportedly done by six out of the seven persons who gave the power of attorney in the first place. The proposed intervener's counsel submit that the subsequent power of attorney (exh VP 4 of encl 86) naming the proposed intervener's as the attorney was registered on

6 January 2003 but there is no certificate on exh VP 4 to state that it was registered at the Penang High Court. Be that as it may, even if the irrevocable power of attorney were to be held to be revoked it does not necessarily mean that the proposed intervener is entitled to an order in terms as prayed for.

[13] The test is to be found in O 15 r 6(2)(b)(i) and (ii) and (3) and for ease of reference, I reproduce the relevant provision as follows:

> (2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application:
>
> (a) ...
>
> (b) order any of the following persons to be added as a party, namely:
>
> (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
>
> (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.
>
> but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorized.
>
> (3) An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, we supported by an affidavit showing his interest in the matters in dispute in the cause or matter or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter.

[14] The proposed intervener also relies on the cases of *EON Bank v Pung Chong Thai* [2001] 5 MLJ 409; [2001] 5 CLJ 469; *Hong Leong Finance Bhd v Staghorn Sdn Bhd* [1995] 2 MLJ 847; [1995] 3 CLJ 368; *Tai Choi Yu v Syarikat Tingan Lumber Sdn Bhd* [1998] 4 MLJ 275; [1998] 4 CLJ 293; *Oscam SPA v Overseas Union Bank (M) Bhd* [1999] MLJU 180; [1999] 3 CLJ 399; *Arab Malaysian Merchant Bank Bhd v Jamaluddin bin Dato Mohd Jarjis* [1991] 2 MLJ 27; [1991] 1 CLJ Rep 19; *Lee Meow Lim v Lee Meow Nyin t/a Cheong Fatt Merchant (Nabisco Brands (M) Sdn Bhd, intervener)* [1990] 3 MLJ 123; *Pegang Mining Co Ltd v Choong Sam & Ors* [1969] 2 MLJ 52.

A **[15]** Therefore the burden is on the proposed intervener to satisfy me that the above requirements have been met. But has he done so? I dare say not. The proposed intervener claims that his joinder will prevent a multiplicity of proceedings. But I say not because if the beneficiaries claim that Kasi has not carried out his duties and tasks as the administrator of the estate of B Samikkanu then the proper course of action that they should pursue would be a suit against Kasi himself in his capacity as the administrator of the estate of Samikkanu, and not against any other party that had dealings with Kasi ie the second defendant. The proposed intervener's application (exh VP 5 of encl 86) to substitute himself in place of Kasi has still not been disposed of C and this calls into question the proposed intervener's locus standi.

[16] Borrowing the famous words of Lord Diplock in *Pegang Mining*, I therefore also find the rights of the beneficiaries cannot be directly affected by any order this court may make because these rights have been by the D irrevocable power of attorney legally and properly given to Kasi and Kasi has not been substituted by the proposed intervener. Enclosure 85 is to my mind premature, to say the least.

E **[17]** It is pertinent also to note that the second defendant bought the property which sale was sanctioned by the court (see exhs A and B of encl 58) and for which the second defendant has paid in full. The balance of convenience has shifted firmly in favour of the second defendant.

F **[18]** I also find merit in the second defendant's argument that there is awkwardness (I would call it an inconsistency) in the position taken by the plaintiffs. The statement of claim was amended (encl 46) upon the application of Kasi to be added as the fifth plaintiff on the basis that he was the administrator of Samikkanu's estate. The plaintiffs did not object to this G amendment for Kasi as the administrator to be added as a plaintiff. Yet they do not object to encl 85 which has to sole purpose of the proposed intervener stepping into the shoes of Kasi vis-a-vis the suit against to second defendant. There to my mind exists some inconsistency and incongruity on the stance adopted by the plaintiffs in regard to Kasi and the proposed intervener.

H

[19] In conclusion, it is my decision that the proposed intervener has not satisfied me that he should be allowed to intervene. To the contrary it is my judgement that having regard to the facts, evidence and submissions encl 85

I

is frivolous and vexatious and an abuse of the court process.

ORDER

[20] Encl 85 is dismissed with costs.

Application dismissed with costs.

Reported by Kohila Nesan